IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

THURSDAY, THE 15TH NOVEMBER 2007 / 24TH KARTHIKA 1929

WP(C).No. 33757 of 2007(R)

PETITIONER:

M/S. WELLWORTH ENGINEERS & POLYMERS,
B-7 INDUSTRIAL ESTATE, ETTUMANOOR, KOTTAYAM,
REPRESENTED BY MANAGING PARTNER,
JACOB J.MAPPILACHERRY.

BY ADV. SRI.VIJAYAN. K.U.
SRI.K.N.SREEKUMARAN

RESPONDENTS:

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1. ASSISTANT COMMISSIONER (KGST)-I,
SPECIAL CIRCLE, COMMERCIAL TAXES, KOTTAYAM,
PIN-686 002.

2. DEPUTY COMMISSIONER (APPEALS),
COMMERCIAL TAXES, KOLLAM, PIN-691 013.

3. INSPECTING ASSISTANT COMMISSIONER,
COMMERCIAL TAXES, KOTTAYAM, PIN-686 002.

4. STATE OF KERALA,
REPRESENTED BY SECRETARY TO GOVERNMENT,
TAXES DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM.

BY GOVT. PLEADER MR. GOVINDAN.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 15/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ANTONY DOMINIC, J.

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W.P.(C) No. 33757 OF 2007 R
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Dated this the 15th November, 2007

J U D G M E N T

Aggrieved by Exts. P4, P4(a) and P4(b) orders, petitioner had filed appeals as per Ext. P5 series in which impugned orders of stay were passed. By the impugned orders, stay was granted to the petitioner on condition that the petitioner remits 50% of the tax and furnish security for the balance amount to the satisfaction of the assessing authority.

2. Learned counsel for the writ petitioner submits that the main issue that arises for consideration in the appeals is one relating to the rate of tax that is applicable. Counsel points out that the very issue is pending before a Full Bench in O.T.A. No. 14/06, W.P.(C) No. 32316/06 and connected cases. Based on this counsel seeks an order of absolute stay in the matter.

3. It is pointed out by the learned Govt. Pleader that though the matter is pending before a Full Bench of this Court, there is no stay granted in the matter.

If that be so, the assessee has the liability to tax until it is otherwise decided by the appellate authority.

4. A reading of Ext. P6 shows that the only ground urged before the appellate authority was regarding the non-availability of immediate source to remit the amount demanded as tax. This has been considered by the appellate authority and it is on that basis the impugned order of conditional stay has been passed. I do not see any error in the approach of the appellate authority in passing Ext. P6.

The writ petition fails and is dismissed.

ANTONY DOMINIC
JUDGE

jan/-